



**Legislative Department  
Seattle City Council  
Memorandum**

**Date:** February 24, 2010

**To:** Sally Clark, Chair  
Tim Burgess, Vice Chair  
Sally Bagshaw, Member  
Committee on the Built Environment (COBE)

**From:** Michael Jenkins, Council Central Staff

**Subject:** Council File (CF) 308884, Petition of Seattle Children's Hospital (Children's) for a new Major Institution Master Plan (MIMP), located at 4800 Sand Point Way NE (Project Numbers 3007521 & 3007696).

**Overview:**

This memorandum provides Council with:

- An overview of the process to complete your review and decisions
- A comparison of the recommended MIMP conditions from the Hearing Examiner's recommendation and those provided in testimony at the February 10 oral argument
- A discussion of options concerning housing replacement requirements under SMC 23.34.124B7.

The following is a brief overview of the actions that the Committee on the Built Environment (COBE) has taken on the request.

Date	Topics
November 18, 2009	Overview of request by Children's for a new MIMP
January 13, 2010	<ul style="list-style-type: none"><li>• Proposed Major Institution Overlay (MIO), including areas of expansion and requested height limits</li><li>• Relationship between the proposed expansion and the Washington State Department of Health Certificate of Need</li><li>• Comprehensive Plan Goals and policies</li></ul>
January 20, 2010	<ul style="list-style-type: none"><li>• Replacement housing requirement</li><li>• Overview of transportation plan</li><li>• Hearing Examiner's recommended conditions</li></ul>
February 10, 2010	Oral Argument on appeals (rescheduled from January 27, 2010)

A. Consideration of the merits and a vote to full council.

Seattle Municipal Code (SMC) Section 23.76.056E requires that Council’s action be based on the Hearing Examiner’s record. This requirement is implemented in the Council Rule on Quasi-Judicial Proceedings (Resolution 31001).

Council Rule VI.C.3 provides several steps concerning a vote on a quasi-judicial land use action. Council Rule VI.C.3.d provides that, upon completion of oral argument, COBE may proceed with discussing the merits of the proposal and either 1) vote on its recommendation to Council or 2) continue discussion and/or vote to a later meeting.

Council Rule VI.C.3.e provides several options for COBE to act on the requested MIMP including:

1. Approve
2. Approve with conditions
3. Modify
4. Deny the quasi-judicial action
5. Remand the application for additional information and/or a new proposal

In this case, a vote by COBE to approve the MIMP would result in *not* adopting the Hearing Examiner’s recommendation to deny Children’s MIMP. The Hearing Examiner’s recommendation also includes recommendations to adopt 43 separate conditions, in the case that the Council did not support the Hearing Examiner’s recommendation to deny the MIMP. If you decide to vote to approve the MIMP, COBE can also vote to amend any and all of the Hearing Examiner’s recommended findings, conclusions and conditions, as long as the vote is supported by the Hearing Examiner’s record.

Alternatively, a vote by COBE to deny the MIMP would be a vote that would result in a recommendation to *adopt* the Hearing Examiner’s finding, conclusions and recommendation to not approve the MIMP, supplemented by whatever additional findings and conclusions the Council deems appropriate.

2. Standard of review

SMC 23.76.056A sets forth that Council’s decision on a MIMP “shall be based on applicable law and supported by substantial evidence in the record”. This requirement is also restated in Council Rule VI.C.5. This standard gives the Council great latitude to make a decision, as long as ‘substantial evidence’ exists in the record to support the Council’s findings, conclusions and decision.

SMC 23.76.056A also sets forth the appellant’s burden of proof, indicating that “an appellant bears the burden of proving that the Hearing Examiner’s recommendation should be rejected or modified”. In this case, all but two of the appellants have now agreed that the Hearing Examiner’s recommendation to deny the MIMP should not be followed, but that most of her recommended conditions of approval should be adopted. However there remains a dispute about the correct interpretation of the housing replacement ordinance.

B. A comparison between conditions found in the MIMP and those presented at oral argument

At the February 10, 2010 oral argument, attorneys for Children’s and Laurelhurst Community Club (LCC) presented a copy of a settlement agreement that outlines the terms by which these parties have agreed to drop their respective appeals in favor of a specific scope of physical development to be approved in a new MIMP. It should also be noted that all appellants who raised issues or concerns with the scope of physical development have also dropped their appeals in favor of this settlement.

The appeals of the Seattle Displacement Coalition/Interfaith Taskforce on Homelessness (SDC/ITH) remain, as neither groups appealed the amount of physical development under the MIMP. The appeals of the SDC/ITH focus on the how the Council should apply the requirement for replacement housing under SMC 23.34.124B7. Oral argument on this issue was also provided by Children’s, DPD and the Coalition of Major Institutions.

The following is a summary of how the scope of physical development in the proposed MIMP differs from that found in the Children’s LCC settlement agreement.

Issue	Proposed MIMP	Settlement Agreement	Hearing Examiner record
Expansion of the MIO boundary	Expand into Laurelon Terrace and Hartmann (MIO area increases from 21.7 acres to 29 acres)	Expand only into Laurelon Terrace (MIO area increases from 21.7 acres to 27.3 acres)	MIMP – Alternative 8/CAC minority reports
Amount of gross developable floor area	2,400,000 square feet	2,125,000 square feet	MIMP Alternative 8/CAC minority reports
Floor area ratio	1.9 (excluding below grade parking and rooftop mechanical equipment)	1.9 (Includes above ground parking)	MIMP/CAC reports
Amount of development allowed above 90 feet in height	<ul style="list-style-type: none"> <li>• 19.75% of land area in MIO above 90 feet</li> <li>• 12.32% of land area in MIO above 125 feet</li> </ul>	<ul style="list-style-type: none"> <li>• No more 20% of land area in MIO above 90 feet</li> <li>• No more than 10% of land area in MIO above 125 feet</li> </ul>	HE Exhibit 81
NE 45 <sup>th</sup> Street setback	<ul style="list-style-type: none"> <li>• Adopt 40 foot setbacks along MIO expansion area (270 feet of frontage)</li> <li>• Retain the existing 75 foot setbacks along the existing MIO (680 feet of frontage)</li> </ul>	75 feet along entire MIO frontage, including the MIO expansion area	CAC minority reports
Location of Southwest parking garage	Located partially above ground near the intersection of NE 45 <sup>th</sup> Street and 40 <sup>th</sup> Ave NE	Located in the same location but entirely below ground	CAC minority reports
Installation of a traffic signal at 40 <sup>th</sup> Ave NE	Required at beginning of Phase 1 construction	Required by issuance of Phase 1 Certificate of Occupancy	FEIS, MIMP

In addition to the proposed modification to Hearing Examiner’s conditions, the agreement contains settlement terms that are not implemented under the MIMP and will not be enforced by the City.

#### C. Council’s direction on the issue of housing replacement

As part of Council’s decisions concerning the MIMP, it must decide if Children’s MIMP complies with SMC 23.34.124.B.7. This code section requires the Major Institution to replace any housing it demolishes as a result of an expansion of its boundary.

Part of this discussion has focused on the question of calculating housing replacement cost in order to determine compliance. The Office of Housing used a “gap financing” model to determine Children’s housing replacement obligation. However, oral argument raised questions about the validity of this model. We will use the following questions to develop Council’s preferred approach to housing replacement in this case. **A Chair’s Recommendation for housing replacement in this case follows this set of questions.**

1. Should a Major Institution receive credit for replacement housing that is paid for with City or “public funds”?

In their appeals and at the February 10, 2010 oral arguments, the Seattle Displacement Coalition and Interfaith Taskforce on Homelessness advocates argued that 1) no public funds should be used to satisfy a Major Institution’s housing replacement requirement and 2) if public funds are used in any development funded wholly or partially by a Major Institution working to satisfy housing replacement obligations, that the Major Institution should not receive credit for meeting the Code. Children’s and others argue that they should be given credit for housing replacement costs that are paid by public entities.

To assist Council in their decision on this sub-issue, a brief background on the range of what might constitute “public funds” should be considered:

a. City funds

- Housing Levy
- Dollars obtained from residential/commercial bonus program in the Land Use Code
- General funds
- Multi-Family Tax Exemption (MFTE)

b. County funds

- Document recording fees used to fund the creation of housing
- Mental illness and drug dependency fees used to fund the creation of housing units

c. State funds

- Housing trust fund
- Historic Preservation tax credits

c. Federal funds

- Community Development Block Grant (CDBG)
- HOME program funds
- Low income tax credits
- Historic Preservation tax credits

2. Can the Council impose rent controls on any replacement housing as a condition of approving a MIMP?

Revised Code of Washington (RCW) 35.21.830 generally prohibits the City from imposing rent controls on residential housing. However, if a developer voluntarily agrees to rent controls as part of a public-private agreement for financing low income rental housing, then the housing may be subject to rent controls.

If the Council allows a Major Institution to pay funds to the Office of Housing to meet its housing replacement requirement, then the City could use those funds to develop housing that could be subject to rent control if the housing to be demolished is rental housing.

3. Should Council establish a home ownership requirement?

SMC 23.34.124B7 requires that replacement housing be “comparable” to the housing that is to be demolished, but does not define the elements of comparability. The Council might include the form of ownership as an element of comparability, i.e., whether the housing is to be “for sale” or rental housing. Because the Laurelon Terrace Housing to be demolished is in a condominium form of ownership, the Council could require that the replacement housing be developed as “for sale” housing, rather than as rental housing.

Chair’s Recommendation

The Major Institution in this case should be allowed to meet the housing replacement requirement in either of two ways:

1. The Major Institution could elect to construct the replacement housing, and finance the construction of the housing in any manner it sees fit, including partnering with private or public entities. However under this option, the Major Institution would not receive credit in fulfillment of the housing replacement requirement for that portion of the housing replacement that is funded by public money.
2. The Major Institution can pay the City the amount of money that the City determines is necessary to build comparable replacement housing. If Children’s elects this option, the amount of the payment would be determined by DPD in consultation with the Office of Housing at the time Children’s applies for development permits. The cost to replace the Laurelon Terrace housing with comparable housing was estimated to be approximately \$31,000,000 in 2009.

If the Council agrees with this recommendation, then the Council must decide a sub-issue, which is whether the prohibition on receiving credit for public money should apply to public money from entities in addition to the City of Seattle.

Committee Chair Clark’s recommendation would allow a Major Institution to use such public funds to help finance a housing replacement project, but it would not allow the Major Institution to receive housing replacement credit for purposes of SMC 23.34.124.B.7 for the publicly funded portion of the project.

Councilmember Clark recommends that the following comparability requirements be established for Children’s replacement housing:

1. 136 units must be built;
2. The units must contain, in the aggregate, the same number of bedrooms as those in the Laurelon Terrace development;
3. The units must contain no less than the square footage that what was contained in the Laurelon Terrace units;
4. The general quality of construction shall be of equal or greater quality than the units in the Laurelon Terrace development;
4. The units will be sold rather than rented; and
5. The replacement housing will be located within Northeast Seattle. (Northeast Seattle defined by the area bounded by Interstate 5 to the west, State Highway 520 to the south, Lake Washington to the east, and the City boundary to the north.)

Committee Direction: